

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

Bail Appl..No. 5976 of 2006

CMP.6144/2006 of J.M.F.C.,TIRUR
CRIME NO.306/2006 OF KALPAKANCHERY POLICE STATION
.....

PETITIONER/ACCUSED NO.5

ERANHIKKAL FAIZAL BABU,
S/O.HASSANKUTTY ALIAS KUNHAPPA HAJI,
THEKKAN KUTTOOR AMSOM, PULLOOR DESOM,
THIROOR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.RAMAKUMAR
SRI.K.M.SATHYANATHAMENON

RESPONDENTS: COMPLAINANT AND STATE

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1. SUB INSPECTOR OF POLICE, KALPAKANCHERY
POLICE STATION.
 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19/10/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

J.M.JAMES, J.

B.A. 5976/2006

DATED THIS THE 19TH DAY OF OCTOBER, 2006

O R D E R

The petitioner is the fifth accused, in crime No.306/2006 of Kalpakanchery Police Station, for the offence punishable under Sections 366 and 376(g) IPC read with Section 34 IPC. The petitioner was arrested on 23.9.2006 and he remains in judicial custody thereafter. Hence this application.

2. The allegation, basing on the statement of the victim, is that she was taken to different lodges by the first and second accused and committed rape on her. Thereafter, she was taken to a bar hotel at Kottakkal. There, the fifth accused, the petitioner herein, had committed rape on her without her consent, putting her into threat and instant fear of death. She had made a complaint before the Kalpakanchery Police Station and thus, the case had been registered.

3. I heard the arguments advanced by the learned

counsel for the petitioner as well as the prosecution. The counsel submitted that the victim was earlier married with one Rafeeq and the said marriage is still subsisting. Therefore, the allegation of the prosecution that the victim was taken on the guise of marriage, cannot be accepted. The learned Public Prosecutor, however, refuted this submission of the counsel for the petitioner on the ground that she had already been divorced by her first husband.

4. After going through the materials that are placed by either side, without expressing any opinion on the merit of the matter, I grant bail and release the petitioner from jail, subject to the following conditions:-

(a). The petitioner shall execute a bond for Rs.20,000/-, with two solvent sureties, each for the like sum, to the satisfaction of the Judicial Magistrate of First Class, Tirur.

(b). The petitioner shall report before

the Investigating Officer, once in a week on every Wednesday, between 10.00 a.m and 11.00 a.m., for a period of three months, starting from 25.10.2006, and thereafter, on the first working day of every month, between the same timings, till the completion of the trial and final disposal of the Sessions Case.

(c). The petitioner shall not leave the State of Kerala, till the trial and disposal of the case.

(d). Immediately on release, the petitioner shall surrender his passport to the Investigating Officer and the said passport shall be retained by the Investigating Officer, until ordered to be returned by the competent Court.

The application is allowed as above.

**J.M.JAMES
JUDGE**

mrCS